HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

Writ Appeal No.167 of 2007

Between:

Tayanna & others

… Appellants

And

Government of Andhra Pradesh,
Rep. By Principal Secretary to Government,
Revenue (L.A.) Department,
Hyderabad & others

… Respondents

::JUDGMENT::

Counsel for the appellants : Shri M. Subrahmanyam

Counsel for the respondents : Government Pleader for Land Acquisition

20.02.2007

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to annul award dated 18.09.2006 passed by Special Deputy Collector, Priyadarshini Jurala Project, Gadwal, Mahaboobnagar District (respondent No.3), the appellants have preferred this appeal under Clause 15 of the Letters Patent.

It is borne out from the record that land measuring Ac.18.21 guntas comprised in Survey No.461 situated in Anugonda Village, Makthal Mandal, Mahabubnagar District was acquired by the respondents under the Land Acquisition Act, 1894 (for short 'the Act') for a public purpose i.e. execution of Priyadarshini Jurala Project at Gadwal. The acquired land included some parcels of land recorded in the names of Gorla Beemanna, Gorla Hanumanna and Sawaranna.

Notification under Section 4(1) of the Act was issued on 10.03.2006 and draft declaration under Section 6 was published on 13.03.2006 because the competent authority had invoked urgency clause enshrined in Section 17 of the Act and dispensed with the enquiry envisaged under Section 5-A of the Act. After considering the claims made by the interested persons, respondent No.3 passed award dated 18.09.2006.

The appellants did not challenge the notifications issued under Section 4(1) and 6 of the Act, but after about four months of pronouncement of the award, they filed writ petition under Article 226 of the Constitution of India with the following prayer:

> " under the circumstances, I pray the Hon'ble Court to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the award No.49/2006 (File No. B/30/2006) dated 18.09.2006 passed by the 3rd respondent as illegal, arbitrary, contrary to the provisions of the Land Acquisition Act and principles of natural justice and violative of the Article 14 & 300-A of the Constitution of India and consequently direct the respondent Nos. 1 to 4 to initiate fresh proceedings including the structures of the petitioners and to pay the compensation to the petitioners herein for deprivation of their lands to an extent of Ac.4.13 gts. out of an extent of Ac.18.21 gts. as per the provisions of the Land Acquisition Act."

In the affidavit filed by appellant No.1 – Tayanna, it was averred that the writ petitioners are the legal heirs of Shri Gorala Beemanna, Shri Hanumanna and Shri Sawaranna, who died on 11.7.1997, 20.1.1990 and 5.2.1997 respectively, but without issuing notice and giving them opportunity of hearing, the official respondents acquired the land. He further averred that respondent Nos. 6 to 10 had fraudulently made claim for award of compensation and respondent No.3 accepted the same without making proper enquiry and without hearing them.

The learned Single Judge dismissed the writ petition on the ground that the petitioners have an effective alternative remedy under Section 18 of the Act.

Shri M. Subrahmanyam, learned counsel for the appellants invited our attention to newspaper cuttings to show that respondent Nos. 6 to 10 had taken compensation by fraudulently projecting them as the persons entitled to receive compensation and argued that the learned Single Judge committed a serious error by declining relief to his clients and relegating them to the alternative remedy under Section 18 of the Act. Shri Subrahmanyam emphasized that the fraud played by respondent Nos. 6 to 10 has the effect of vitiating the award and, therefore, the remedy available to the appellants under the Act cannot be treated as an effective alternative remedy. Learned counsel also invited our attention to certificates dated 9.12.2006 issued by Village Assistant Secretary, Anugonda to show that the appellants are the legal heirs of late Shri Gorla Beemanna, Shri Hanumanna and Shri Sawaranna respectively and argued that acquisition of land should be nullified on the ground of violation of the rules of natural justice because the competent authority did not give them notice and opportunity of hearing.

We have considered the submissions of the learned counsel, but have not felt impressed. It is neither the pleaded case of the appellants nor any evidence has been produced before the Court that their names are entered in the revenue records as legal heirs of the pattedars. Therefore, the acquisition proceedings cannot be annulled on the ground of violation of Section 4(1) of the Act and the rules of natural justice. The post-award certificates obtained by them from Village Assistant Secretary, Anugonda cannot be made basis for recording a finding that they are the legal heirs of the pattedars who are said to have died in the year 1997 and 1990 respectively and the competent authority should have issued notice by assuming that the appellants are legal heirs of the deceased pattedars. The appellants

have not explained as to why they maintained silence for a period of nine long years and did not take steps for transposition of their names in the revenue records by producing evidence before the competent authority to show that they are legal heirs of the pattedars. Even before this Court, the appellants have not produced any tangible evidence to substantiate their claim of being the legal heirs of late Shri Gorla Beemanna, Shri Hanumanna and Shri Sawaranna. However, we do not consider it proper to record any conclusive opinion on this issue because we are convinced that the remedy available to the appellants under Section 30 of the Act (not under Section 18) is an effective alternative remedy and there is no extraordinary reason for making a departure from the settled rule that the High Court will not entertain writ petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioners. (See **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Champa Lal v. I.T. Commissioner**[4], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[5], **C.I.T. v. Ramendra Nath Ghosh**[6], **Swadeshi Cotton Mills Co. Ltd. v. Govt. of U.P.**[7], **Gujarat University v. N.U. Rajguru**[8], **State of H.P. v. Raja Mahendra Pal**[9], **L.L. Sudhakar Reddy v. State of A.P.**[10], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[11], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[12], **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,**[13] **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[14] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[15])

There is another reason for not entertaining the writ petition.

The question whether the award passed by respondent No.3 is vitiated by fraud cannot be decided by this Court under Article 226 of the Constitution because the same would involve adjudication of the issues of facts and that exercise can be more effectively undertaken by the civil court.

With the above observations, the appeal is dismissed.

Needless to say that the appellants shall be free to avail the alternative remedy available to them under Section 30 of the Act or any other provision of law.

As a sequel to dismissal of the writ appeal, W.A.M.P.No. 286 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

February 20, 2007
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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] AIR 1970 SC 645
[5] AIR 1970 SC 1980

[6] (1972) 4 SCC 379

[7] (1975) 4 SCC 378

[8] AIR 1988 SC 66

[9] (1999) 4 SCC 43

[10] (2001) 6 SCC 634

[11] (2002) 1 SCC 216

[12] (2003) 2 SCC 107

[13] (2004) 3 SCC 553

[14] (1983) 2 SCC 433

[15] (1985) 1 SCC 260